
(1990) 11 KL CK 0010
In the High Court Of Kerala
Case No : M.F.A. 884 of 1990

Mary Roy

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

Kerala Dramatic Performances Act, 1961 — Section 10, 4, 4(1), 4(2)

Citation : (1991) 1 KLJ 321

Hon'ble Judges : K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : Lekha Suresh, for the Appellant; N.N.D. Pillai, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal, u/s 10 of the Kerala Dramatic Performance Act, 1961 (Act 41 of 1961), preferred against the proceedings of the District Collector and District Magistrate, Kottayam, dated 15th October 1990. By the said proceedings, the District Collector and District Magistrate, Kottayam, in exercise of the powers vested in him under Section 4(2) of the Act prohibited the staging of the drama "Jesus Christ Super Star" for a period of two months in any part of Kottayam District. The Appellant is the Principal, Corpus Christi High School. The proposal was to stage the said drama at Corpus Christi High School on the 15th of October 1990 and later changed to 16th of October 1990.

2. Representations were made to the District Collector and District Magistrate, Kottayam by representatives of various Christian Churches and by the laity to ban the drama "Jesus Christ Super Star" which was proposed to be staged at the Corpus Christi School, Kottayam as it was sacrilegious and blasphemous. It was complained that the drama was intended to wound the religious feelings of the Christian Community. One of the representations was signed by 3381 persons. The main objections to the drama, as detailed in the proceedings of the District Collector and District Magistrate, dated 15th October 1990, are, as follows:

1. The relationship between Jesus Christ and Mary Magdelene is depicted to be an explicitly, sexual relationship.
2. The divinity of Jesus Christ is denied and he is depicted as a weak human being.
3. The story of Jesus is made out to be a myth.

The District Collector, after an anxious perusal of the script of the drama, considered the various objections raised, and found them well founded. In the order appealed against, various passages from the script of the drama have been extracted to show that the objections are well-founded. After referring to the various portions of the script and other circumstances, it was observed as follows:

From the above observations it is clear that the entire approach of the play is against the fundamental beliefs of Christians. It depicts him as a weak man, a fraud, who cheated people and who enjoyed an erotic relationship with a prostitute. His entire mission on earth is made out to be a failure. The presentation of Jesus in the play is both sacrilegious and blasphemous intended to outrage the religious feelings of Christians.

Repelling the plea of the Principal of the High School, that the drama was only a piece of art and must be allowed to be staged, and in the event of any ban thereon, it will affect the freedom of the citizen to express himself, the District Collector observed as follows:

... The principal has the right to believe in whatever she wants to. What she believes in and what she does not believe are her problems. But when she tries to impose that view on a society whose fundamental beliefs are questioned the community reacts. A responsible Principal of a School, has to be a responsible citizen. Though a Christian, she need not necessarily have to follow the dictates of any Church. In the privacy of her conscience, of her home, she could lash out against the Church and against the world. She could call them all fools and their God a fraud. But when she elevates her contempt for humanity and sells it to the public in a so called art form, drama, Jesus Christ Super Star, the believers will be on a war path must because it is a play written by somebody else it does not take away her responsibility. There is a whole lot of rubbish churned out as art in various parts of the world. It may be an art form somewhere else. But it need not necessarily be art form acceptable here. It is told that at Hyde Park in London one could, shout at the top of ones voice whatever one wanted to. It could be any madness. Everyone knew it to be madness. But when the sacred premises of a school which is supposed to be a temple of learning of respect for freedom for oneself and respect for Ors., is converted into an area for the perpetuation of hatred in innocent minds it crosses the limits of acceptable private idiosyncracies. When parents of children protested she issued notice to the parents that she would close down the school if they did not fall in line. Parents naturally got panicky.

It is morally wrong for the Principal to be staging such controversial plays in the school for two reasons. First the child chosen to play the particular role in the play does not have the option to make a free choice whether to act in the play or not. Even if his beliefs are diametrically opposed to the views expressed in the play he will not be able to say no to the Principal in the present situation, existing in the school. I do not think that any child acting in the play "Jesus Christ Super Star" agrees with the views expressed in the play. Therefore are they not being forced to act against their beliefs? It is presumed that all the actors are non-Christians, it is even worse.

On the merits, the District Collector concluded that the drama about to be performed is an objectionable performance. The District Collector, on a perusal of the report of the Sub Collector, Kottayam, dated 14th October 1990 and also the admissions contained in the communications of the Principal, Corpus Christi School, held that he was convinced that the staging of this drama will cause communal disharmony and will lead to serious breach of peace. On this aspect, he stated thus:

The Sub Collector, Kottayam in his letter, dated 14th October 1990 has reported that there is every possibility of a clash taking place when the play is staged on 15th at the Corpus Christi School. The Christian Community as a whole is highly agitated over the issue. If the play is allowed to be staged and clashes take place there is bound to be violent widespread agitation by the Christian Community all over the State. We cannot afford to risk any such eventuality, "that there is bound to be a law and order problem is admitted by the Principal in her letter dated 27th August 1990 and 28th August 1990. I quote from the letter, dated 27th August 1990: "I have requested the Superintendent of Police, Kottayam to grant adequate police protection to the School especially on the proposed date of the satyagraha.... and we fear that the satyagrahis are likely to stone the cars on the 30th August, 1990. I did not contemplate banning the play earlier even though I had received a massive memorandum two months back because I presumed that better sense would prevail. Many emissaries talked to her in the meanwhile. But she did not relent. I do not seem to have any other option now other than to invoke the provisions of the Kerala Dramatic Performance Act.

In the above circumstances, as I am convinced that the staging of this drama will cause communal disharmony and lead to serious breach of peace....

It is against the said order passed by the District Collector and District Magistrate, Kottayam, dated 15th October 1990, the Principal of Corpus Christi High School, wherein the drama was proposed to be staged, has come up in appeal.

3. We heard counsel for the Appellant. At the outset, we should mention that the Appellant herself has brought to our notice, by way of an additional affidavit filed in support of C.M.P. No. 5249 of 1990, that due to subsequent events she filed O.P. No. 9741 of 1990 praying for the issue of certain reliefs, wherein the legality

or propriety of the order that is now appealed against is also raised.

4. The powers vested in this Court u/s 10 of the Act is no doubt very wide. But the question is whether order appealed against prima facie discloses any illegality or irregularity to merit interference in this appeal. Section 4 of the Kerala Dramatic Performance Act, 1961 (Act 41 of 1961) is as follows:

4. Power to prohibit performances temporarily.- (1) Whenever the District Collector is satisfied that a play, pantomime or other drama performed or about to be performed is an objectionable performance or that its performance is likely to lead to a breach of the peace, he may, by order stating the grounds on which he considers the performance objectionable or likely to lead to a breach of the peace, prohibit its performance.

(2) Before making an Order under Sub-section (1), the District Collector shall give a reasonable opportunity to the organiser or other principal person responsible for the conduct of the performance or to the owner or occupier of the public place in which such performance is intended to take place, to show cause why the performance should not be prohibited:

Provided, that in case where the circumstances require immediate action, to be taken and do not admit of a reasonable opportunity being given, the District Collector may by order, prohibit the performance without giving such opportunity in which case he may review the order on the application of any person affected by it.

(3) No order made-under this section shall remain in force for more than two months from the making thereof unless the Government, by notification in the Gazette; otherwise direct.

It is stated in the very order of the District Collector, dated 15th October 1990, that before the order was passed notice to the Appellant calling for her objections could not be given in view of paucity of time. At the same time, mention is made to Section 4(2) of the Act, which provides that in cases where the District Collector fails to afford an opportunity for being, heard before passing the order, he is competent to review the order on the application of any person affected by the order. We asked counsel for the Appellant as to why she did not file an application before the District Collector to review the order in the light of the proviso to Section 4(2) of the Act. Counsel for the Appellant did not give us any satisfactory reply. We should state that the inbuilt safeguard contained in the proviso to Section 4(2) of the Act enabling the affected party to pray for a review of the order passed against him, is a factor to be taken into account, as to whether in all the circumstances of the case, this appeal should be entertained, at this stage.

5. u/s 4(1) of the Act, whenever the District Collector is satisfied (a) that a play... or other drama performed or about to be performed is an objectionable performance or (b) that its performance is likely to lead to a breach of the peace,

he may, by order stating the grounds on which he considers the performance objectionable or likely to lead to a breach of the peace, prohibit its performance. On the facts of this case, the proceedings of the District Collector dated 15th October 1990, towards the concluding portion, has referred to the communication of the Sub Collector, dated 14th October 1990 and also the letters of the Principal of the Corpus Christi School, dated 27th August 1990 and 28th August 1990, which on the face of it, showed that there were materials before the Collector, on the basis of which he could be satisfied, that the staging of the drama will cause communal disharmony and lead to serious breach of peace. We have extracted, in the earlier portion of this judgment, the relevant passages of the proceedings of the District Collector, wherein he has dealt with the matter in detail. We obtained the relevant files from the Government Pleader to verify the facts and contents of the letter of the Sub Collector, Kottayam, dated 14th October 1990. We are satisfied that the files contain the letter of the Sub Collector, dated 14th October 1990 and the contents of the said letter, have been correctly stated in the order of the District Collector.

6. On the basis of the above letter of the Sub Collector, Kottayam, dated 14th October 1990, and also on the Appellant's own showing by her letters, dated 27th August 1990 and 28th August 1990 seeking police protection, if the Collector was satisfied that the performance of the drama is likely to lead to a breach of the peace, it will be difficult for this Court to hold, either that there was no material before the Collector to be so satisfied or that on the basis of the materials referred to, it cannot be said that the Collector could not have been honestly satisfied, that the performance of the drama is likely to lead to a breach of the peace. It should be noticed, that for passing an order u/s 4(1) of the Act, it is sufficient if any one of the conditions envisaged therein is present. If the latter limb of the said section is satisfied, i.e. the District Collector was satisfied that the performance of the drama is likely to lead to a breach of the peace, on grounds stated, that by itself will be sufficient to sustain, the order passed by him. We have adverted to the materials relied on by the Collector in his order, dated 15th October 1990, on the basis of which he has stated that he was convinced that the staging of the drama will cause communal disharmony and will lead to serious breach of peace. It is true that the statutory power conferred on a public authority is so done upon trust and not absolutely. It should be and can be validly used only in the right and proper way and for the purpose for which it is so conferred. In other words, there is no absolute or unfettered discretion in the official in whom the statutory power is conferred. But, the scope and range of scrutiny of the exercise of such power by Courts depends upon the nature of the power conferred and the subject matter dealt with. If the District Collector, a responsible public authority, who has a duty to enforce the law, was performing such duty, the Court will not ordinarily interfere with the exercise of the discretion, unless it is shown that the exercise of the discretion is tainted by illegality, unfairness or irrationality. Only in an extreme case where it is shown that the statutory official is either neglecting his duty or exercised the power

illegally or unreasonably or in an unfair manner or without bona fides, an occasion would arise for a judicial review of the matter. Here, it is fairly clear that the District Collector was carrying out the duty, to enforce the law. It cannot be said to be illegal. Section 4(1) of the Act mandates the District Collector that if he is satisfied that the performance of the drama is likely to lead to a breach of the peace, he may, by order in writing prohibit its performance. The District Collector has considered the various representations received by him from various Christian organisations as also from the Appellant. He has adverted to substantial portions of the script of the drama and has evaluated them in the light of the various objections raised by various Christian Churches and by the laity. All the representations filed before him have been considered in detail. Prima facie, the order cannot be said to be unfair. Similarly, it is apparent from the order that the District Collector has applied an objective approach and by no stretch of imagination can it be said that in the light of the materials available before him, the conclusion reached by him is irrational or without bona fides. It is no part of the functioning of this Court, to undertake an in depth evaluation of the various alternative pleas on the merits, at this stage, to find out, whether the exercise of the power by the District Collector is objectionable.

7. On facts, we are satisfied that u/s 4(1) of the. Act the District Collector was well justified in prohibiting the performance of the proposed drama on the ground that it is likely to lead, to a breach of the peace. This by itself is sufficient to hold that the order appealed against merits no interference at this stage. As we stated earlier, it is open to the Appellant to invoke the jurisdiction of the District Collector praying for a review of the order under the proviso to Section 4(2) of the Act. If the Appellant is aggrieved, we are at a loss to understand as to why the Appellant has not done so.

8. On the facts of this case, the order appealed against prima facie discloses enough materials to show that the District Collector could be satisfied that the drama about to be performed is an objectionable performance. We have earlier extracted the three objections voiced against the staging of the drama. Substantial portions of the script of the drama have been quoted in the order. A perusal of the said script would show that the entire approach is against the fundamental beliefs of the Christian faith, and that the presentation of Jesus in the play is both sacrilegious and blasphemous, which will outrage the religious feelings of Christians. The substantial question that arises for consideration of this Court, at this stage, is whether prima facie there are grounds or materials for the District Collector to be satisfied about the existence of any one of the conditions specified in Section 4(1) of the Act to pass the order appealed against. On that aspect, as we have indicated above, prima facie the order appealed against discloses the grounds from which it could be said that the District Collector was honestly satisfied that the performance of the drama is objectionable and that it is likely to lead to a breach of the peace. The earlier Bench decisions of this Court in *Antony v. District Collector* 1987 (1) KLT 132 and *Parameswaran v. District Collector*, 1988 (1) K.L.T 34 are relevant in this context.

9. We are of the view that the order appealed against does not merit interference by this Court. We dismiss this appeal.